IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 10416 of 1996
with
SPECIAL CIVIL APPLICATION Nos 10419 & 10420 of 1996

For Approval and Signature:

HON'BLE MR. JUSTICE ANANT S DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

NATVARLAL P PANDYA

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 10416 of 1996

MR PS PATEL for Petitioner No. 1

MS MITA S PANCHAL, AGP for Respondent No. 1-3

CORAM : HON'BLE MR. JUSTICE ANANT S DAVE

Date of decision: 20/12/2004

COMMON ORAL JUDGEMENT

#. The main grievance ventilated in this group of petitions under Article 226 of the Constitution of India

by the petitioners is almost identical and at the request of the parties, all the matters are heard together.

#. It is the case of the petitioners that, at the relevant point of time, pursuant to advertisement issued by the respondent-authority, the petitioner of Special Civil Application No. 10416 of 1996 had received interview letter dated 3.6.94 and was asked to remain present on 27.6.1994 and thereafter, the petitioner was, after successful interview, placed in the select list at sr. no. 3. That along with the petitioners, other 6 candidates were also selected for the post of Sepoy.

#. According to the petitioner, though the petitioner was found eligible to be appointed on the post of Sepoy by the Selection Committee, he was denied appointment by the respondent-authority in arbitrary manner and the candidate who was placed at sr. no. 7, was given appointment order. Likewise, the petitioner of Special Civil Application No. 10419 of 1996 had received interview letter dated 3.6.94 and was asked to remain present on 27.6.1994 and thereafter, the said petitioner was, after successful interview, placed in the select list at sr. no. 5. Similarly, the petitioner of Special Civil Application No. 10420 of 1996 had received interview letter dated 3.6.94 and was asked to remain present on 27.6.1994 and thereafter, the said petitioner was, after successful interview, placed in the select list at sr. no. 1.

#. The learned advocate for the petitioners submitted that the appointment, denied to the petitioners amounts to unreasonable, arbitrary and discriminatory exercise of power by the respondent no. 4 in violation of Article 14 of the Constitution of India, inasmuch as there was no justification to appoint candidate at sr.no. 7 and deny to those, who have been placed ahead of the said Shri Hiren N.Trivedi, who figured at sr.no. 7 in the select list. It is further contended by the learned advocate for the petitioners that financial constraints or economic drive, as stated in the affidavit-in-reply for not operating the select list and thereafter giving advertisement in the year 1996 for selecting about 82 Sepoys, itself show arbitrary action on the part of the respondent authority, particularly when the selected candidates like the petitioners were not given appointment by the authority. Therefore, according to the learned advocate for the petitioners, treatment meted out to the petitioners by the respondent authorities is discriminatory and violative of Article 14 of the Constitution. Lastly Shri Patel, the learned advocate

for the petitioners submitted that the petitioners who hail from poor strata of society are from the tribal district of State of Gujarat and with great difficulty, they could succeed in the selection procedure and, therefore, to deny the appointment on the ground of exhaustion of select list, particularly when another advertisement is issued for the same post and other such vacant posts, case of the petitioners ought to have been considered at relevant point of time for the appointment to the post of Sepoy and,therefore, appropriate directions be issued to the respondent authority to consider the case of the petitioners for appointment to the post of Sepoy.

#. The learned AGP Ms. Mita S. Panchal has invited attention of this Court to the affidavit-in-reply filed by the respondent whereby it is specifically stated and admitted that so far as three petitioners of these Special Civil Application Nos. 10416 of 1996, 10419 of 1996 and 10420 of 1996 were concerned,they were selected and placed at sr. nos. 5, 6 and 1 respectively in the select list. However, the case of Mr. Hiren N.Trivdei, who figured at sr. no. 7 in the select list was considered only on the different ground and the said Shri Trivedi was appointed on compassionate ground and,therefore,the case of Shri Hiren N.Trivedi at sr.no. 7 cannot be compared or equated and no benefit can be extended to the petitioners. Therefore, according to the learned AGP, it was not a case of discriminatory or arbitrary exercise by the authority and no interference is called for in exercise of power under Article 226 of the Constitution of India.

#. The learned AGP has further submitted that the second advertisement produced by the petitioners was in pursuance to the notification dated 4.9.96 issued by the Home Department of the State of Gujarat, whereby it was decided to fill up 82 posts of Constables after receiving permission of the government and, therefore, it was a decision taken by the State authority and it had nothing to do with depriving the petitioners from getting appointment. Not only that, but according to learned AGP, during the pendency of the select list, whereunder the petitioners were selected, policy of austerity measures of finance was in existence and it was decided not to fill up the vacant posts and thereafter, duration of the select list, which was for one year only had expired.

#. In support of her argument, the learned AGP has relied upon the decision of the Apex Court in the case of

Vinodant T. and others Vs. University of Calicut and others, reported in (2002) 4 Supreme Court Cases 726, wherein, the Apex Court has held that, the persons selected for a post did not acquire a right to be appointed to such post. According to her, it was the case where during the ban on appointment for three years for the post in question by an Ordinance of 1997, validity of the select list had expired and the selectee of the list had claimed appointment, and negativing the contentions of the learned advocates, clear law is laid down that the candidates, who are placed in the select list, cannot have indefeasible right for appointment. She further submitted that, in the said decision, the Apex Court has also laid down law to the effect that even if vacancy exists, it is open to the authority concerned to decide that how many appointments would be made.

#. According to the learned AGP, the petition does not require any interference by this Court in exercise of powers under Article 226 of the Constitution.

#. Having heard the learned advocates for the parties and having perused the relevant record of the case and the decision of the Apex Court, I do not find any merits in the submissions of the learned advocate for the petitioners. It is true that the petitioners were selected and placed in the select list for appointments to be made on the post of Sepoy at respective place. It is also true that one Hiren N. Trivedi, who figured at sr.no. 7 was offered appointment, but as stated in the affidavit-in-reply, exception was carved out in case of said Shri Hiren Trivedi on the basis of compassionate ground and his case was different altogether than the petitioners. Therefore, no analogy can be drawn by which any assistance can be rendered to the petitioners. Though similarly situated, Shri Hiren Trivedi who figured at sr. no. 7 was offered an appointment on totally different ground and, therefore, it cannot be said that the petitioners are being discriminated or the authority has exercised power in arbitrary manner in violation of Article 14 of the Constitution of India.

##. That even during the pendency of these petitions, when the second advertisement was issued in the month of September in the year 1996, validity period of the select list had expired and the same was justified by the respondent that one of the reasons to deny appointment during the life of the select list is that there were measures of austerity as a matter of policy decided by the Finance Department of the State of Gujarat. Looking to the facts and circumstances of these cases, it cannot

be said that the action of the authority in denying appointment to the petitioners is in any manner unreasonable or arbitrary and though the matters were admitted at relevant point of time, no relief was granted and even pursuant to the second advertisement also, appointments are already made. In view of this fact, no direction can be issued, which can set the clock back. In view of the aforesaid discussion and observations, the petitions fail and are dismissed. Rule is discharged in each of the petition with no order as to costs.

[ANANT S. DAVE, J.]
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